APPEAL NO. 022492
FILED NOVEMBER 13, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on September 4, 2002. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) impairment rating (IR) is 0% as certified by the first designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The claimant appealed and the respondent (self-insured) responded.

DECISION

The hearing officer's decision is affirmed.

The claimant sustained a compensable injury on _____. The claimant testified at the CCH and medical reports were in evidence. The parties stipulated that the claimant reached maximum medical improvement (MMI) on the statutory date of MMI, May 4, 2000. In December 2000, which was well after the date of statutory MMI, the first designated doctor chosen by the Commission certified that the claimant has a 0% IR. The first designated doctor's IR report reflects that he reviewed the claimant's medical records, examined the claimant, and evaluated all of the body parts claimed to have been injured, including, but not limited to, the claimant's neck, back, and right upper extremity.

In October 2001, the Commission sent another medical report to the first designated doctor for review, noting that the injury includes cubital tunnel syndrome in the right elbow, and right carpal tunnel syndrome, for which the claimant had surgery. The Commission's letter requested the first designated doctor to make any necessary amendments to his report. The first designated doctor provided a written response to the Commission's letter, in which he noted the additional medical report that was sent to him, as well as the medical records he had already reviewed and the results of his December 2000 examination and evaluation of the claimant. The first designated doctor maintained that he saw no reason to change the 0% IR. Despite the first designated doctor's timely and responsive reply to the Commission's letter, a Commission employee wrote on December 18, 2001, that a new designated doctor would be selected because the first designated doctor "did not want to address the information presented to him." In April 2002, the Commission appointed a second designated doctor to determine the claimant's IR. The self-insured disputed the Commission's appointment of the second designated doctor prior to the date the second designated doctor examined the claimant. The second designated doctor certified that the claimant has a 22% IR.

Section 408.125(e) provides that if the designated doctor is chosen by the Commission, the report of the designated doctor shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other

medical evidence is to the contrary. In Texas Workers' Compensation Commission Appeal No. 94966, decided September 6, 1994, the Appeals Panel stated "a second designated doctor is rarely appropriate and should be restricted to situations where, for example, the first selected designated doctor cannot or refuses to properly apply the AMA Guides [appropriate edition of the Guides to the Evaluation of Permanent Impairment, published by the American Medical Association] (Texas Workers' Compensation Commission Appeal No. 93045, decided March 3, 1993), particularly after being asked for clarification or additional information concerning the report." In Texas Workers' Compensation Commission Appeal No. 950615, decided June 5, 1995, the Appeals Panel noted that "resolution of the IR cannot be indefinitely deferred to await the results of a potential lifetime course of medical treatment."

The hearing officer determined that the first designated doctor was able and willing to perform, and did perform, the duties of a designated doctor; that the first designated doctor's examination of the claimant included an examination of the neck, low back, and right upper extremity, including the right wrist and elbow; that the first designated doctor addressed the additional information sent to him by the Commission; that the great weight of the other medical evidence is not contrary to the report of the first designated doctor; that the Commission improperly appointed the second designated doctor; that the first designated doctor's opinion is entitled to presumptive weight; and that the claimant's IR is 0%. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**DIRECTOR OF EMPLOYEE BENEFITS**
**(ADDRESS)**
**(CITY), TEXAS (ZIP CODE)**.

_____
Robert W. Potts
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Michael B. McShane
Appeals Judge